

IS THE NEGRO GUILTY?

One of John Evans' Counsel Reviews the Case—His Synopsis of the Evidence, Doubts as to the Competence of Mattie Cole's Identification of the Assailant—No Politics in the Case

To the Editor of The Messenger:

The effort made to some to sustain the verdict of the jury in convicting John Evans at Rockingham seems to me to be made with the belief that a jury "can do no wrong." But, here in our town there is a poor negro, Fred Wooten, who was convicted (with his brother and a friend) of arson, over in the adjoining county of South Carolina. After the brother and his friend had been hung and he had served 12 of his 17-year sentence in the penitentiary, it was ascertained that another committed the crime, and, upon a death-bed, confession was made, the keys to the building, etc., surrendered. The pardon that freed Fred Wooten could not reach Amos Wooten or William Easterling, who died on the scaffold, innocent of that crime.

No one dares to say that the jury in that case was corrupt, or incompetent, but no one will say that the verdict was just.

Now what shall be done about it when so many think John Evans is not guilty? Shall we declare that it is a reflection upon the jury? Have they perjured their souls merely because as so many think, John Evans may be the right man? From some of the articles against this poor unfortunate it would seem that some must think so. No one can or will try to reflect upon the jury that tried Evans. They were men, human. Did they err? There is no other question pertinent.

If I know my own mind, I say truly, from the bottom of my heart that it is my firm conviction that the jury did err, and that if executed, the hanging of John Evans will be a judicial murder.

Being of counsel for the defence, it may seem that I would be prejudiced thereby, and I am not foolish enough to claim that I may not be influenced some by the interest that this has forced me to take in the case. But the standpoint of the defence is not to defend, over my protest, yielding only when that good man, for whom I have a tender affection, Judge Melver, said he thought it my duty to appear for the defence, and he urged me to do so; for if I did not, it might cause him to have to order counsel from another bar to aid in the defence.

I was at home in Laurinburg when the prisoner was arraigned, but in obedience to telegrams from the court, I arose before day and rode twenty-six miles through the country to appear at the trial, arriving at the court house just as the jury was called. The first juror called was taken. At that time I was as ignorant of the case as he, and I had not time to see a sample of the newspaper, especially as Messrs. Dockery & Dockery, who were assigned to the arraignment, as was I, to defend the prisoner.

Naturally, I supposed we had a guilty client. To see that he had justice was my aim, and as I had previously stated, if I believed him innocent, I would do all I could in my weakness, to defend him. To clear him, no technical defence, or cavilling, or delay of any kind would be entered upon by me; that if he should be acquitted wrongly, and I was fully convinced thereof, I felt that I could not readily acquiesce in that, but would be so anxious to avenge justice that I might, perchance, violate the law myself in attempting to do it.

Now, some members of the state have stated that publican lawyers for the defence have been trying to get a republican governor to pardon this man. That charge is unworthy of notice, but I will reply to it. One of the reasons urged why I should appear for this poor fellow was to take it out of politics, and keep it there, and I was selected for that purpose, especially as I had been chairman of the democratic executive committee of the county and my democracy could not be questioned.

Now, I have been twice to see the governor, and I will go again, if I do not change my mind as to the guilt of this man—if my going will assist in getting him clear of the sentence or get it modified. I went to the governor, saw the governor, returned home, got up affidavits, etc., and went to Raleigh and laid them before the governor on Tuesday night of last week. I do not understand human nature, or Governor Russell is playing a part, if he is not troubled over this matter. I was fully impressed with that view of the case, and I am sure I do not regret my job, nor would I exchange places in this matter, hard as is my own work, and as much as the question has troubled me. It has caused me to lose a good deal of sleep; for the action of the court in assigning me, with Messrs. Dockery & Dockery, placed this man's life in part in my hands. I would say right here that all of the counsel for the defence have worked harmoniously in all things, and have had singular unanimity of views. It is true, I went to see the governor in Wilmington without consulting with them, though I wrote them, but they did not get my letter in time to answer before I had gone.

Now to the evidence: I took full notes, over forty pages, at the trial, and have to rely upon that for what I say.

On the morning of October 23d, about ten minutes before 6 o'clock, three sisters left their home in Rockingham for the factory. They passed along a path that ran inside of a field, by the fence to a point where the barbed wire was loose, and then the path passes through and skirts the woods just outside of the fence for some distance. The foremost girl, 15 years old, saw nothing at any time. When the foremost girl turned out of the line of the path (inside the field) to pass through the fence and go outside of the same, she stepped from before the second girl.

The second girl, hurrying after the first, and about three steps behind, saw directly beyond and in front a man crouching in the weeds just beyond the point where the path passed through the fence, and in line with the direction of the path she was on. This little girl, exactly 13 years and 7 months old that day (for she was born March 23d last, and was 13 years and 7 months old on the morning of October 23d), saw him and thought he was a well-known character, a drunk white man. Passing on through the fence, when she got through she noticed that it was not a white man, and turned to her sister, and said, "Look out, Lillie." The sister was then just drawing her skirts about her to step through the fence, as Miss Mattie testified (and

therefore she had her eyes on the sister, and not the man, to see that such was the case). Instantly this man sprang upon the oldest sister, who had taken the three steps that intervened between each of the girls hurrying ("because we was late," in Miss Mattie's own words) to the factory. Miss Mattie screamed, ran, and never so much as looked back. This was, her whole opportunity for seeing the assailant. They were hurrying, three steps apart, and after herself getting through the fence, one glance at the man, one at her sister; the man springs upon her sister, and instantly there is flight, with that species of fear that does not permit her to look back, even.

That morning was cloudy, and there was fog, and a heap of it, too. The weather reports will demonstrate the correctness of this, had not numbers of people seen that it was true. The almanac says the sun arose that morning at 6:14, but Washington time being about 15 minutes ahead of the sun, in this longitude, this would make sunrise at 6:29 a. m., or 34 minutes after this occurrence. Furthermore, woods skirted to the east of this place, so I am informed, and rather calculated to darken the place, is my informant.

One paper has said that Mr. Terry, a white man, testifying for the defence, said it was light. He said some time after the occurrence it was light enough to see a man pretty well, but that "it was a very heavy, foggy morning." I have been informed that after the trial was over, and court had adjourned on Saturday night, things were made pretty lively for him around Rockingham, and there were wild threats, because he went on the stand and told what he did.

One would think the very best efforts would be put forth to get a correct description of the assailant, and no one would send out orders to arrest any person until such description was given. The wires were hot with messages to all adjacent places to catch a mulatto. The first description I saw of the criminal was a telegram from Mr. W. N. Everett, mayor of Rockingham, saying that it was a mulatto. The sheriff got what the father gave as the proper description, and it called for a mulatto. The description of the father that it was a mulatto, he insisted that it fitted the description of a certain well known mulatto, whom he wanted arrested, but the sheriff ascertained that that man had not been in town recently. We had the Western Union and the Postal Telegraph opened, and all telegrams of description, and they brought many. If there was one sent out within three days after the crime was committed that did not call for the mulatto, I did not see it. Some even called for mulatto with white vest, dotted black.

Furthermore the first arrest was an Italian and thick and fast thereafter, bright mulattoes were arrested. On the third day afterwards, John Forepaugh ("banjo picker"), a bright mulatto was arrested and escorted to Rockingham by the Maxton Guards. Being carried before the little girl, she did not identify. Shortly afterwards Editor Cook, of the Laurinburg Exchange, interviewed her, and she said she knew that he wrote in his notes: "Miss Mattie says it is the right man." She told Mr. Cook that she thought it was, and her father said he thought that if brought before her without the soldiers' presence to excite her, she would say he was the right man. Next morning he was carried before her and she failed to identify him. Now, Mr. Everett, in his article last Sunday, says: "It is a sad day in North Carolina to let it go abroad that the word of a good, honest white girl, of intelligence and character, is to be trusted aside by the Governor of this great state, on the word of a man who is leeching to save his neck, backed up by two of his sorry, lying negro pals." This little girl under 14, where there is only a presumption in case one of this age should commit a crime, has no word of censure from me. She rather attracted me while she was on the stand. But she is a child. She may have just as thousands of others have been mistaken as to the identity. Some are familiar with the case in Wilmington like this: A crime was committed on the street (purse snatched, I think) and the criminal, running off, was noticed by one who had ample opportunity to perceive his features. The identification of one accused was direct and positive. The captain and part of the crew of a vessel testified that the accused was far out at sea on their vessel that day. So it goes. Such identification cannot be beyond question. If so, why did the parties having the matter in hand, when Mr. Forepaugh, release John Forepaugh when she said he was not the man? Mr. Everett said: "Several arrests . . . were made without her (Miss Mattie's) knowledge or authority, and as soon as she was consulted on the subject, those parties were immediately released from custody." That was John Forepaugh, a bright mulatto, carried from Miss Mattie's presence to Wilmington for? And why did he languish in New Hanover jail nearly a week? Did those managing the business doubt Miss Mattie's "word," when she failed to identify, as soon as she was consulted on the subject? Gentlemen, it simply means that you did not consider the identification, or lack of it, conclusive. Then, pray do not arraign all those who feel now just as you did then about the matter of identification.

Now, as to the alibi, proved by various parties, among them negroes who proved good characters by white men, and white men who proved good characters by negroes, known well to her presence, hurriedly, and with no one else to stand beside him, and the identifying was over with and he on his way to Raleigh. No mark, no scar, no anything that makes him different from another genuine African. The man who said: "all 'coons' look alike, so low is the order of his intellect, so lacking in capacity to meet shrewd cross examination; but he told his tale, and I believe, told it straight."

He was arrested in Anson county, carried at once on the train to Rockingham where he was hurriedly taken from the train by officers, known well to Miss Mattie as such, handcuffed to her presence, hurriedly, and with no one else to stand beside him, and the identifying was over with and he on his way to Raleigh. No mark, no scar, no anything that makes him different from another genuine African. The man who said: "all 'coons' look alike, so low is the order of his intellect, so lacking in capacity to meet shrewd cross examination; but he told his tale, and I believe, told it straight."

Arriving at Raleigh, he was interviewed. He said he left Laurinburg Friday evening, went to Rockingham, stayed all night and next morning at the lively stable heard certain conversations and certain people called, etc., etc., setting up a full alibi, which was corroborated by witnesses, white

and black, proving good characters for themselves. The reporter who came down, summoned for the state, to contradict Evans, was put on the stand. He told me Evans' statement was not at variance with his testimony on the stand, on any substantial point. One Mr. Watkins, white, who proved an excellent character, told on the stand that he left his home as the town clock was striking 6, and after a walk of some 200 yards, arrived at the stable, went in, saw a stranger and inquired who it was, was told, but did not remember the name or see the face well, but did remember that party, a negro, was on his horse as the town clock was just getting up, within four to six, and positively not over ten minutes after 6 o'clock. The crime was committed five minutes before 6, some 400 to 500 yards (a quarter of a mile) away, or even more. All of this fully corroborated, and man identified as John Evans.

They say these witnesses had no "impulses." The town clock was striking every half hour, and it was in sight of the stable, and if not too cloudy and foggy (?) it must have been plainly visible.

They say Evans went the most direct route to see his sister at Mr. Hinson's. Mr. Hinson did not go that route home from his stable. There was not a scintilla of evidence that Evans had ever been in that part of town, and his sister and he both testified that he had never been to Mr. Hinson's to see her. He said he did not know where Mr. Hinson lived, and there is not one thing to indicate that he did.

Evans was seen in Captain Everett's store at 7 a. m., asking for the clerk's office to get a certificate that he had not committed a crime in Richmond county. He had dirt on his knees, gotten there, as I have shown, by affidavits filed and interviews with parties for whom he worked, by picking cotton on his knees, the day before. After being soundly cursed by a bystander in the store and warned that one crime having been committed there that morning, he would do well to beware lest he get his neck in a halter, he remained around town until 1 o'clock. Captain Blocker, head of the cannon, and Captain C. H. Blocker, aid on staff, both of whom were kinsmen of mine, and were of course, closely connected, came to the scene, and the other two came to the rear after I was wounded. I will, no doubt, as well as all who were in the fort, condemn this letter of General Bragg as most unbecomingly and disgracefully untrue in its assertions of duty in ascertaining the facts.

Sad, indeed, for the confederacy, was the day General Bragg was put in command of the Wilmington garrison. A careful reading of the history of our late war will show that General Bragg was a signal failure in the matter of the defense of Fort Fisher finds its counterpart in his campaigns in the West.

General Bragg had made a reputation for his military prowess in the defense of the "gateway of the confederacy," and no slanderous, trumped-up charges of his published military record, thirty years after the lamentable event, can detract from the immortality of glory won by the splendid Whiting and the superb Lamb and the noble Moore.

From the condemnation he has received and deserves.

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General Terry in his official report of the battle and capture of Fort Fisher, says that he lost in that engagement 1,445 officers and men, and that he was determined resistance, of a small force of only about 1,900 confederates. His statement of the conduct of General Hoke is incorrect. If General Bragg had have done his duty to General Whiting, and sent him reinforcements when he asked for them, the result would have been different.

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Curtis—the last badly wounded. It would have been passing strange if an expedition of nearly 10,000 men had been sent ashore without a general. Again he says that two hours after dawn the fort was not damaged," the fact being that every gun on the land face of the fort was disabled or dismantled by the forces of the enemy, while Mosby and two or three of his men rode down to the headquarters of the general.

No sound was to be heard in the foggy darkness but the slight splash of the horses in the muddy road, and even had any of the enemy been awake they would never have dreamed for a moment of the guerilla strategy they were called upon to execute.

General Bragg was not at Fort Fisher nor could he be induced to go or send any assistance to the fort. He would listen to nothing suggested by either of those noble and brave officers. I allude to General Whiting and Colonel Lamb, both of whom were in the fort at the time of the bombardment, and if Colonel Lamb and General Whiting could have been present, the results would have been different. I read carefully the article by Colonel Lamb, published in The Observer recently, and testify to the correctness of all he said.

As to all the officers and most of the soldiers being drunk, it is absolutely untrue. We had no time to look up anything to eat, much less to drink. I was in it all, from the beginning to the end, and can truthfully testify to the fact that not a drop of spirits did I see or smell, nor did I see anyone drunk. Now who has the best right to know the facts and to be believed—an eye witness who was in the fort, or a man who, twenty miles away, and out of the reach of any guns.

Two of the officers, Captain K. J. Bradburn and Captain C. H. Blocker, aid on staff, both of whom were kinsmen of mine, and were of course, closely connected, came to the scene, and the other two came to the rear after I was wounded. I will, no doubt, as well as all who were in the fort, condemn this letter of General Bragg as most unbecomingly and disgracefully untrue in its assertions of duty in ascertaining the facts.

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WILMINGTON MARKETS.

COTTON REPORT.

Wilmington, N. C., December 11.
Receipts of cotton today, 8,830 bales. Receipts same day last year, 8,156 bales. This season's receipts to date—237,787 bales.
Receipts to same date last year—198,286 bales.
The quotations posted at 4 o'clock today at the exchange.

Cotton steady.
Ordinary 2 15-16
Good ordinary 2 15-16
Low middling 2 15-16
Middling 2 15-16
Good middling 2 15-16
Same day last year, 74c.

NAVAL STORES.

Spirits turpentine—Machine barrels firm at 30c; country barrels firm at 29c.
Rosin nominal at \$1.15 and \$1.20.
Tar steady at 40c.
Crude turpentine steady; hard \$1.40; yellow \$1.30; virgin \$1.30.
Prices same day last year—Spirits turpentine 24c and 24c; rosin 45c and 45c; turpentine 40c and 40c; spirits turpentine \$1.40, \$1.30 and \$1.30.
Receipts today—41 casks spirits turpentine, 53 barrels rosin, 32 barrels tar, 13 barrels crude turpentine.
Receipts same day last year—41 casks spirits turpentine, 60 barrels rosin, 112 barrels tar, 25 barrels crude turpentine.

COUNTRY PRODUCE.

Pork—Very dull, with the market oversupplied.
Peanuts—North Carolina, prime 55c/60c per bushel; extra prime, 60c; fancy 72c. Virginia—Extra prime, 40c/45c; prime, 35c/40c; middling, 30c/35c; low, 25c/30c.
Rice—Upstairs, 65c/80c; downstairs, 1.10c/1.15c.
Corn—47c/50c.
North Carolina Bacon—Hams, 10c/lb; shoulders, 9c/lb; sides, 7c/lb.
Chickens—Dull; spring 10c/lb; hens 15c/lb; roosters, 10c/lb.
Turkeys, live, 10c to 12c per pound.
Eggs—Dull at 17c.
Shingles—Per 1,000 five inch hearts and saps, \$1.00/2.00; six inch, \$2.00/3.00.
Timber at \$3.00 to \$8.00 per 1,000 feet.

MARKETS BY TELEGRAPH

FINANCIAL.

New York, December 11.—Money on call nominally at 1 1/2 per cent; prime mercantile paper at 30c/35c; sterling exchange steady with actual business in bankers bills at \$1.45/\$1.45 1/2 for demand and \$1.42 1/2/\$1.42 3/4 for sixty days; posted rates \$1.43/\$1.44 and \$1.40/\$1.41; commercial bills \$1.45/\$1.45 1/2; N. Y. Curo. 9c/10c; U. S. 4 1/2c/5c; silver dollar 87c; Mexican dollars 40c; state bonds dull; railroad bonds strong; government bonds strong.

STOCKS.

Atchafalpa 12 1/2 W. & L. E. 2 1/2
B. & O. 13 1/2 W. & L. E. 10 1/2
Ches. & Ohio 22 1/2 Adams Ex. 15 1/2
Chic. & Rock. 162 American Ex. 115
Chic. & N. W. 162 United States 40
Del. & Hudson. 108 1/2 Wells Fargo 112
Del. & L. W. 114 N. Y. Curo. 9c/10c
Erie 170 Am. Cot. Oil, per 75
Illinois Central 107 1/2 Am. Tobacco 88
L. & N. 57 1/2 Am. Tobacco, pre-12
Manhattan L. 107 1/2 Con. Gas 150
Mo. & N. O. 107 1/2 Gen. Electric 133
N. Y. Central 107 1/2 Lead 34 1/2
Pittsburgh